



NORTH CAROLINA

State Board of Elections

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August 19, 2016

VIA ELECTRONIC MAIL

Shannon R. Joseph
Morningstar Law Group
sjoseph@morningstarlawgroup.com

Re: Correspondence demanding that the N.C. State Board of Elections ("State Board") halt current elections to the Wake County Board of Commissioners and designate a special filing period for affected contests ("Demand Letter")

Dear Ms. Joseph:

We are in receipt of the above-referenced Demand Letter, in which your client, Caroline Sullivan, interprets the August 9 order of Chief U.S. District Judge James Dever in *Raleigh Wake Citizens Association, et al. v. Wake County Board of Elections et al.* to require an immediate cessation of election activity and the designation of a special filing period in contests for Wake County Board of Commissioners Districts 4, 5, and 6. The agency does not agree, and there are no present plans to call a meeting on this matter.¹

We understand Chief Judge Dever retains jurisdiction over the implementation of this order, and the State Board stands ready to carry out any directive issued by the Court. Please do let me know if this office can be of assistance in this matter.

Sincerely,

Joshua Lawson
General Counsel, N.C. State Board of Elections

Cc.: Chief U.S. District Judge James C. Dever, III (*via* hand delivery)
Anita S. Earls, Southern Coalition for Social Justice (*via* anita@scsj.org)
Charles Marshall, Brooks Pierce (*via* cmarshall@brookspierce.com)
James Bernier, N.C. Department of Justice (*via* jbernier@ncdoj.gov)

Encl.: Demand Letter (August 18)
Correspondence from the Wake County Board of Elections (August 10)

¹ The State Board held an emergency meeting on August 10 to establish a special filing period for the Board of Education. The meeting was held in response to the specific request of county elections officials. Our agency remains committed to swift action to facilitate the smooth administration of the approaching general election.



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August 18, 2016

BY E-MAIL AND HAND DELIVERY

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Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.
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Josh Lawson
General Counsel
North Carolina State Board of Elections
441 North Harrington Street
Raleigh, NC 27603
legal@ncsbe.gov

Re: 2016 Election for Wake County Board of Commissioners

Gentlemen:

We represent Caroline Sullivan, a resident of Wake County. Ms. Sullivan timely and properly filed for election to the Wake County Board of Commissioners in 2016 during the candidate filing period held pursuant to the election plan set forth in N.C. Session Law 2015-4.

That election plan has been held to be unconstitutional. Consequently, the United States District Court for the Eastern District of North Carolina enjoined the Wake County Board of Elections from using the plan set forth in Session Law 2015-4 "in any elections, including the November 2016 election." The federal court ordered that "November 2016 Board of Commissioners election proceed pursuant to the 2011 redistricting plan that was used in the 2014 Wake County Board of

Commissioners election[,]” and that the candidates “run in residency Districts 4, 5, and 6 and be elected countywide.”

Since the federal court order issued last week, Ms. Sullivan has received no communication from the Wake County Board of Elections regarding her candidacy or the plan for election of county commissioners in 2016. While she has attempted individually and through counsel to get additional information, none has been forthcoming. On Friday, August 12, Ms. Sullivan attempted to file to run for election to the District 4 residency seat on the Board of Commissioners, a seat in which she currently serves. The Wake County Board of Elections turned her away and stated that there was no open filing period for the Wake County Board of Commissioners race.

While it is within the authority of the Boards of Elections to modify election schedules in the event of a court decision holding a North Carolina election law to be illegal, as has occurred here, it is outside the authority of the Boards of Election to dispense with fundamental and required prerequisites to a valid election. A filing period for candidates pursuant to a valid election plan is a fundamental component of a fair and proper election. There has been no candidate filing period for the Wake County Board of Commissioners election pursuant to a valid election plan. All election proceedings that have occurred for the county commission race were conducted pursuant to an election law that was declared entirely unconstitutional. By proceeding with an election that does not provide for candidate filing conducted pursuant to a valid election plan, the Wake County Board of Elections and the North Carolina State Board of Elections are acting outside the authority conferred to them by the North Carolina General Assembly and in violation of the constitutional rights of candidates and voters. An invalid election result will occur should this course not be altered immediately.

It is unfortunate and indisputably inconvenient to have an election schedule interrupted. Dispensing with constitutional rights of voters and candidates for the sake of convenience, however, is too high a price.

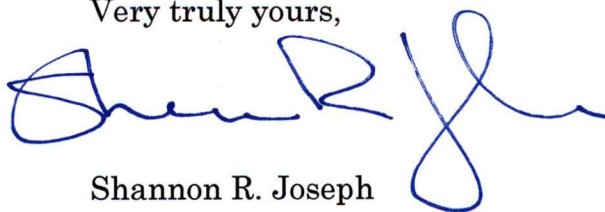
Ms. Sullivan hereby makes demand on the Wake County Board of Elections and the North Carolina State Board of Elections to immediately halt the use of any and all election procedures conducted pursuant to the unconstitutional 2015 redistricting plan, pursuant to which candidate filing and a primary have

proceeded. Ms. Sullivan further demands that a full and proper election process for the Wake County Board of County Commissioners be conducted pursuant to the 2011 redistricting plan that was used in the 2014 Wake County Board of Commissioners election for the residency Districts 4, 5, and 6. For that process to occur, candidates must be allowed time to file with an understanding of, and pursuant to, the valid and constitutional election districts now declared to be in effect for the upcoming election.

Given the shortness of time and the importance of the issues, we request that you respond by or before 12:00 noon on Monday, August 22. Ms. Sullivan intends to seek judicial relief should that be necessary.

Thank you for your prompt attention to this matter. We look forward to your response.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Shannon R. Joseph", with a large, stylized flourish at the end.

Shannon R. Joseph



Board of Elections

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August 10, 2016

By E-mail and Hand Delivery

Kimberly Westbrook Strach, Executive Director
North Carolina State Board of Elections
441 North Harrington Street
Raleigh, NC 27603

Dear Director Strach:

In Judge Dever's August 9, 2016 Order, the United States District Court ordered the Wake County Board of Elections to proceed with preparations for the November 8 election using the 2011 redistricting plan that was used in the 2014 elections for the Wake County Board of County Commissioners and the 2011 and 2013 elections for the Wake County Board of Education.

Pursuant to the instructions in the August 9 Order, the November 8 election will provide for the election for Board of County Commissioners from Districts 4, 5, and 6 on a countywide basis. The November 8 election also will provide for the election, by plurality, of School Board candidates from the nine single-member districts. Under the terms of the Order, the candidates elected to the Board of County Commissioners and Board of Education will serve two-year terms.

To comply with the Order, the Wake County Board of Elections requests that the State Board of Elections take immediate action that will enable us to stay on schedule in order to have orderly elections on November 8, 2016.

Specifically, the WBOE requests that the State Board institute a candidate filing period for election to the Wake County Board of Education beginning at 12 noon on August 11, 2016. Under existing practices, the WBOE requests that the filing period should last for at least five business days, through 12 noon on August 17, 2016.

The Wake County Board of Elections recognizes that this time frame truncates the time we will have to prepare and finalize ballots for the November 8 election. We will strive to complete all necessary ballot preparation prior to the September 9 deadline for the availability of absentee ballots. However, because we have not previously had to operate in such a compressed time frame, we hope that the State Board of Elections will promptly entertain any requests to extend this deadline should it become necessary.

If you have any questions, please let me know.

Sincerely,

Gary Sims
Director

cc: Josh Lawson, General Council, North Carolina State Board of Elections (by email)
W. Ellis Boyle, Chair, Wake County Board of Elections (by e-mail)
Eddie Woodhouse, Secretary, Wake County Board of Elections
Mark Ezzell, Member, Wake County Board of Elections